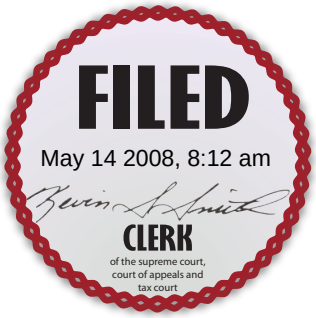


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| FIRST FINANCIAL, N.A., | ) | |
| | ) | |
| Appellant-Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 11A01-0709-CV-418 |
| | ) | |
| PATRICIA TRAVERSE, ET AL., | ) | |
| | ) | |
| Appellee-Defendant. | ) | |

APPEAL FROM THE CLAY CIRCUIT COURT
The Honorable Joseph D. Trout, Judge
Cause No. 11C01-0610-PL-435

**May 14, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

First Financial, N.A. ("Financial") appeals from the trial court's judgment in favor of Patricia Traverse ("Traverse"). Financial raises three issues on appeal, that we consolidate and restate as: whether that the trial court's decision to award Traverse $500.00 for the loss of the use and enjoyment of her land and to order the removal of Financial's structure that encroached on Traverse's property was clearly erroneous.

We affirm.

## FACTS AND PROCEDURAL HISTORY

In 2005, Financial brought a foreclosure action against Richard L. Rutledge, Jr. and Lillian R. Rutledge, the owners of real estate consisting of land and a house erected thereon in Clay County, Indiana. The real estate was sold at Sheriff's sale, and Financial was the highest bidder. In either late 2005 or early 2006, Financial conducted a survey of the real estate. The survey revealed that an addition to house on the real estate built by the Rutledges encroached on Traverse's property.

Financial brought an action against Traverse to quiet title claiming that Traverse acquiesced to the encroachment and relinquished her interest in the property because she failed to object during and after the construction of the addition by the Rutledges. Traverse counterclaimed contending that Financial was trespassing on her property and depriving her of its use and enjoyment. After a bench trial, the trial court found in favor of Traverse and against Financial in the amount of $500.00 damages for trespassing and ordered Financial to remove the structure within 120 days of its order. Financial now appeals.

## DISCUSSION AND DECISION

Financial appeals from a negative judgment. In such cases, we may only reverse if the

evidence is without dispute and leads to only one conclusion, and that conclusion is different than the trial court's judgment. *Nodine v. McNerney*, 833 N.E.2d 57, 64-65 (Ind. Ct. App. 2005), *trans. denied*. Further, when a trial court enters findings and conclusion thereon, this court applies a two-tiered standard of review: whether the evidence supported the findings and whether the findings support the judgment. *Id.* at 64. This court may only reverse if the findings or conclusions are clearly erroneous; i.e., if there are no facts or inferences to support them. Ind. Trial Rule 52(A); *Nodine*, 833 N.E.2d at 64.

Financial contends that the trial court's failure to apply the doctrine of title by acquiescence, laches, or equitable estoppel was clearly erroneous.

Title by acquiescence is a doctrine that dates from around the turn of the twentieth century. *Huntington v. Riggs*, 862 N.E.2d 1263, 1267 (Ind. Ct. App. 2007), *trans. denied*. In *Adams v. Betz*, 167 Ind. 161, 78 N.E.2d 649, 652 (1906), our Supreme Court defined this doctrine as follows:

> As a general rule, it is affirmed by the authorities that where owners of adjoining premises establish by agreement a boundary or dividing line between their lands, take and hold possession of their respective tracts, and improve the same in accordance with such division, each party, in the absence of fraud, will thereafter be estopped from asserting that the line so agreed upon and established is not the true boundary line, although the period of time which has elapsed since such line was established and possession taken is less than the statutory period of limitation. The general rule recognized by the authorities is that a boundary line located under such circumstances, in the absence of fraud, becomes binding on the owners establishing it, not on the principle that the title to the lands can be passed by parol, but for the reason that such owners have agreed permanently upon the limits of their respective premises and have acted in respect to such line, and have been controlled thereby, and therefore will not thereafter be permitted to repudiate their acts.... A valid agreement between owners of land locating a boundary line between them is binding upon each and all persons claiming under or through them, or either of them.

Thirty years later, we applied the rule in *Bubacz v. Kirk*, 91 Ind. App. 479, 171 N.E.2d 492 (1930). *Huntington*, 862 N.E.2d at 1267. In both *Adams* and *Bubacz*, the adjacent landowners were estopped from denying that a disputed boundary was the legal boundary line when both parties had previously agreed to the new boundary and proceeded to construct buildings and other structures in reliance on that agreement. *See Freiburger v. Fry*, 439 N.E.2d 169, 172 (Ind. Ct. App. 1982) ("The line agreement need not be express and may be inferred from the parties' actions, but there must be evidence of some agreement as to the boundary line.").

The doctrine of laches is more broadly applied and is the knowing acquiescence in existing conditions and an inexcusable delay in asserting a known right, which results in prejudice to the opposing party. *AmRhein v. Eden*, 779 N.E.2d 1197, 1208 n.9 (Ind. Ct. App. 2002), *trans. denied*. Laches requires evidence that: (1) there was inexcusable delay in asserting a right; (2) an implied waiver from knowingly acquiescing in existing conditions; and (3) a change in circumstances causing prejudice. *SMDfund, Inc. v. Fort Wayne-Allen County Airport Authority*, 831 N.E.2d 725, 729 (Ind. 2005).

Estoppel parallels laches and title by acquiescence and is another form of equitable relief. The party claiming equitable estoppel must demonstrate: (1) it lacked knowledge and the means to gain the knowledge of a fact in question; (2) it relied upon the conduct of the opposing party; and (3) it was prejudiced by that reliance. *Story Bed & Breakfast, LLP v. Brown County Area Plan Com'n*, 819 N.E.2d 55, 67 (Ind. 2004).

Financial requests that we overturn the trial court's decision because Traverse did not affirmatively act to defend her land interest. Specifically, Financial contends that Traverse's

failure to hire an attorney, order a survey, request to stop the addition's construction, or take other action at or after the time she suspected an encroachment evidenced and amounted to acquiescence. Further, Financial argues that even Traverse's mowing for the time period before, during, and after the survey evidenced her relinquishment of the disputed property.

Here, there is no evidence of any agreement between Traverse and the Rutledges regarding the location of the property line. There is no evidence that Traverse knowingly acquiesced in the encroachment. There is no evidence that Financial or any of its predecessors in title lacked knowledge of the boundary line or the means to ascertain it. Finally, there is no evidence that Financial or any of its predecessors in title were prejudiced as a result of any acquiescence on the part of Traverse. Rather, there is evidence that Traverse complained when the Rutledges dumped wood on her property. She questioned the Rutledges about whether the addition encroached on her property at the time it was constructed and was told that the Rutledges had the property surveyed and that there was no encroachment. Finally, there is evidence that she continued to mow the disputed property, as did the Rutledges.

Financial has failed to show that the evidence leads unerringly to the conclusion that Traverse acquiesced in the construction of the addition or otherwise expressly or impliedly agreed to a new boundary line. Therefore, under our standard of review, we affirm the trial court's judgment.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.